

BOARD OF APPEALS CASE NO. 5147

BEFORE THE

APPLICANTS: Steven and Wilbur Carrier

ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow a mobile
home in the Village Residential District;
1206 Holloway Road, Darlington**

OF HARFORD COUNTY

Hearing Advertised

Aegis: 5/9//01 & 5/16/01

HEARING DATE: June 18, 2001

Record: 5/11/01 & 5/18/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Steven C. Carrier, is seeking a Special Exception pursuant to Section 267-53F(11) of the Harford County Code, to allow a mobile home in a VR/Village Residential District.

The subject property is located at 1206 Holloway Road, Darlington, MD 21034, and is more particularly identified on Tax Map 20, Grid 4D, Parcel 315. The subject parcel contains .49 acres, is zoned VR, Village Residential, and is entirely within the Fifth Election District.

Mr. Wilbur Carrier appeared and testified that he is the co-owner of the property with his father, the Applicant herein. The witness stated that the property currently has a mobile home on it and he wishes to replace that small mobile home with a double wide home. The proposed home is a Skyline Home Model B209 and indicated that the dwelling will meet the size, height and width requirements of the Code. Additionally, the roof will be a 1-4 pitch and appearance will match other homes in the community. The home will be on a permanent foundation and all wheels, axles, lights and other apparatus will be removed prior to occupancy. The witness indicated that there are two other mobile homes in the vicinity of which he is aware and he does not believe his proposed home will have any negative impact on neighboring properties and will be an improvement over the existing home on the parcel.

There were no persons who appeared in opposition and the Department of Planning and Zoning recommends approval of the subject request.

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CONCLUSION:

Section 267-53F(11) of the Harford County Code provides:

“Mobile Homes. These uses may be granted in the R3, R4, VR, VB, B1, B2 and B3 District, provided that:

- (a) The main roof of each unit shall be pitched, having at least one (1) foot of rise for each four (4) feet of horizontal. The roofing material shall be compatible with residential dwellings within the neighborhood in which the mobile home is to be located.**
- (b) The exterior finish of the unit shall be of a color, material and scale which are harmonious with the existing residential dwellings within the neighborhood in which the mobile home is to be located. In no case shall the degree of reflectivity of exterior finishes exceed that of semigloss white paint. Siding, trim and features shall be compatible with other materials used in construction of the mobile home unit.**
- (c) The mobile home unit shall be placed on a permanent foundation in accordance with the manufacturer's specifications. Installation shall include a positive surface water drainage away from each unit.**
- (d) All wheels, axels, transporting lights and removable towing apparatus shall be removed from each unit prior to occupancy.**
- (e) The lot size and yard requirements applicable to single-family detached dwelling in the respective zoning district shall apply to mobile homes.**
- (f) In the VR and VB Districts, mobile homes shall have a minimum width of twenty-four (24) feet and a minimum length of forty-eight (48) feet.”**

In the instant case, the Applicant has demonstrated that his proposed mobile home meets or exceeds each of the requirements of the Code. There was no evidence presented to the Hearing Examiner refuting those facts. The Department of Planning and Zoning examined the impacts of the proposal on the provisions of 267-9I entitled, Guides, Limitations and Standards and the Hearing Examiner adopts those unrebutted findings of fact.

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The following is a review of Section 267-9I, “Limitations, Guides and Standards”, and comments of the Department of Planning and Zoning regarding each subsection:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approved an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard of any of the following:

- (1) The number of persons living or working in the immediate area.

The subject property is located in the Village of Darlington. Housing types range from the conventional single-family dwelling to modular and mobile homes. The subject lot is located in a small subdivision that was recorded in 1955 containing a mix of conventional single-family homes as well as single and doublewide mobile homes.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The Applicant's property is located near the end of a paved County road. There will be no impacts on roads or traffic patterns.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal will not have a fiscal impact on the County.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

Not applicable to the request.

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- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The Sheriff's Department and the Maryland State Police will provide police protection. The property is located approximately 1000 feet from the new Darlington Fire Station, which will provide immediate fire and ambulance protection. Water and Sewer needs will be handled by an on site well and septic system. The Applicant must obtain a private hauler to dispose of trash.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The proposal is permitted in the VR/Village Residential District with Board approval. The new unit appears to be compatible with other homes on Holloway Road and appears to meet the Code requirements for the special exception.

The Department has discussed the issue of the garage/shed, smaller shed and the portion of the driveway on the adjoining lot with the Applicant's attorney who has assured the Department that these items will either be removed or relocated onto the Applicant's property. Proper permits will be required for the new structures or the relocation of structures.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

Not an issue in this case.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposed use is recognized as a use that is compatible with the neighborhood and the zoning district provided the Applicant meets the requirements of the Code.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There are no environmental features that will be impacted by this request.

- (10) The preservation of cultural and historic landmarks.

Not applicable to the report.

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The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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Applying the standards of Schultz, the Hearing Examiner finds that the Applicant's proposed special exception use at this location will have no greater impact than if it were proposed on any other similar parcel within the VR District.

The Hearing Examiner recommends approval subject to the following conditions:

1. The Applicant obtain all necessary permits to remove the existing single-wide mobile home and to locate the new 24 foot by 48 foot double-wide mobile home.
2. The unit shall be placed on a permanent foundation and anchored in accordance with County regulations.
3. The Applicant shall remove the accessory structures from Lot 12.

Date JULY 25, 2001

William F. Casey
Zoning Hearing Examiner